

Pennsylvania Superior Court: Failure to Preserve Critical Evidence Following Catastrophic Accidents May Impact Employer Immunity under the Pennsylvania Workers' Compensation Act

In an April 17, 2009 opinion in the case of *Minto v. J.B. Hunt Transport, Inc. et al.*, the Pennsylvania Superior Court held that an employer may be liable to a former employee for failing to preserve specific evidence during a post-accident investigation. This opinion not only reinforces the need to preserve critical evidence during a post-accident investigation, but also suggests that the exclusivity provision of the Pennsylvania Workers' Compensation Act may not shield employers from claims by employees or former employees related to the spoliation of evidence.

Mr. Marton Minto sustained serious injuries when the tractor-trailer he was driving on behalf of his employer, J.B. Hunt, ran off of the highway. J.B. Hunt conducted a post-accident investigation. Within 12 hours of the accident, they hired an accident investigator, took pictures of the truck and scene, and obtained a police report. A representative of J.B. Hunt also inspected the truck and accident scene. The vehicle was subsequently repaired 15 days later. Minto was fired by J.B. Hunt several months after the accident. He subsequently retained counsel who requested that J.B. Hunt preserve maintenance records, parts, and other documents related to the crash.

Minto filed a negligence and products liability suit against J.B. Hunt and the manufacturers of the truck and its component parts. The Complaint alleged that J.B. Hunt negligently destroyed and failed to preserve key parts of the tractor-trailer, including the seat-belts, brakes, and "black box" data and that this failure prejudiced Minto in his product liability suit against the other defendants.

J.B. Hunt filed a Motion for Judgment on the Pleadings, arguing that Minto's claims were barred by the exclusivity provision of the Workers' Compensation Act. The trial court granted J.B. Hunt's motion, and Minto appealed.

The narrow issue on appeal was whether the exclusivity provisions of the Act precluded Minto's claims against J.B. Hunt based on the facts pled in the Complaint. The Complaint did not allege damages against J.B. Hunt for the physical injuries Minto sustained as a result of the accident. Rather, Minto alleged economic damages as a result of J.B. Hunt's failure to preserve evidence after the accident. The Superior Court held that Minto's claims were not precluded by the exclusivity provision of the Workers' Compensation Act because the injury he is alleging did not "arise" in the course of his employment.

This holding could have a substantial impact on employers and insurers involved in post-accident investigations. Such entities may now need to obtain consent from the injured employee to repair or replace vehicles, equipment, or property involved in an accident. Failing to properly preserve these items, or communicate with an employee or his or her representative regarding the preservation of such items, could impact an employer's ability to use the Workers' Compensation Act as a shield in third party civil litigation.

If you have any questions regarding the potential impact of this decision or would like additional information about the implementation of a post-accident policy and procedure that considers the above issues, please contact Andrew J. Spaulding at 215-587-1160 or aspaulding@postschell.com, or Joseph R. Fowler at 215-587-1003 or jfowler@postschell.com.

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